

JULIAN F. KNOX
NANCY H. KNOX

IBLA 88-66

Decided April 22, 1991

Appeal from a decision of the California State Office, Bureau of Land Management, denying request for transfer of rental from geothermal lease CA 1010 to patentee of reserved mineral interest.

Affirmed as modified and remanded.

1. Conveyances: Interest Conveyed--Conveyances: Reservations--Federal Land Policy and Management Act of 1976: Conveyances--Federal Land Policy and Management Act of 1976: Mineral Revenues--Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests--Geothermal Leases: Generally--Geothermal Leases: Assignments or Transfers--Geothermal Leases: Lands Subject to--Geothermal Leases: Patented or Entered Lands--Geothermal Leases: Rentals--Mineral Lands: Mineral Reservation--Patents of Public Lands: Effect--Patents of Public Lands: Reservations--Public Lands: Administration--Public Lands: Jurisdiction Over--Public Lands: Leases and Permits

After a conveyance of reserved mineral interests under sec. 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719 (1988), was made, subject to an existing geothermal lease to which the United States also conveyed all its interest, the United States could no longer collect rental accruing to the conveyed portion of the lease.

2. Accounts: Refunds--Geothermal Leases: Rentals

Because BLM had no authority to accept rental payment for land within a geothermal lease over which it had no jurisdiction it was obliged to refund to the lessee any excess payment.

APPEARANCES: Julian F. Knox and Nancy H. Knox, Sausalito, California, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Julian F. Knox and Nancy H. Knox have appealed from a September 18, 1987, decision of the California State Office, Bureau of Land Management (BLM), denying their request for transfer of rental from geothermal lease CA 1010. Appellants are the owners of lot 3, sec. 5, T. 11 N., R. 5 W., Mount Diablo Meridian, California, containing 38 acres, which was patented to a predecessor-in-interest on July 12, 1939, with reservation of all the coal and other minerals to the United States. On June 2, 1983, BLM issued patent No. 04-83-0071 to appellants, conveying the reserved mineral interest to them with the following condition: "The land described is subject to the terms of existing geothermal lease CA 1010 issued effective August 1, 1982, pursuant to the Geothermal Steam Act of 1970 (84 Stat. 1566, 30 U.S.C. 1001-1025), but Grantor hereby includes in this conveyance all of Lessor's interest therein." ^{1/}

On July 29, 1987, appellants wrote BLM concerning their entitlement to the lease revenues, and BLM responded on September 18, 1987, with the following decision from which this appeal is taken:

There are no provisions in the Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. 1001-1025) which allow for the segregation of the lease when the ownership of the land changes.

^{1/} Several procedural errors were committed in the processing of the geothermal lease application and appellants' application for the reserved mineral interest. When appellants filed their application on Jan. 20, 1982, the geothermal lease application had been pending for several years. With both applications pending at the same time, BLM issued the lease without prior notice to appellants. BLM then issued the patent to appellants, effectively assigning BLM's rights, obligations, and interests as lessor to appellants, without ever notifying the lessee that such an action was contemplated. Such a decision may have an adverse effect upon a lessee for reasons set forth in Solicitor's Opinion, 61 I.D. 459 (1954). Because alienation of the lessor's rights by the United States may adversely affect the lessee, BLM should not have issued the mineral patent without notifying the lessee and providing him with an opportunity to appeal. See, e.g., City of Las Cruces, 105 IBLA 50 (1988), involving the transfer of administration of a right-of-way to a patentee of Federal land. The termination of the lease, however, has mooted these concerns. See, e.g., Blackhawk Coal Co. (On Reconsideration), 92 IBLA 365, 93 I.D. 285 (1986).

We also note that 43 CFR 2720.1-1(b) now provides that publication of a notice of filing of an application for conveyance of reserved mineral interests shall "segregate the mineral interests owned by the United States in the public lands covered by the application to the extent they will not be subject to appropriation under the public land laws, including the mining laws." The regulation in effect when appellants' patent was issued contained no such provision. Nonetheless, the current regulation does not segregate land from mineral leasing, so it does nothing to prevent the procedural error of issuing a lease for land within a pending application without notice to the patent applicant.

Further review of patent No. 04-83-0071 discloses that the patent should have been granted subject to the existing rights and conditions of lease CA 1010. There should have been no conveyance of the lessor's interest in the lease to the patentees.

Under these circumstances, no rental payments made to the United States may be transferred to Julian or Nancy Knox.

The lease terminated August 1, 1984, for failure of the lessee to timely pay his annual rental so rent for this lease is no longer being collected. Similarly, had the patentees been entitled to rental payments, their share would have been only for one year's rental for the acreage in their patent which would have amounted to \$40.00. [Emphasis in original.]

(Decision at 1).

In their notice of appeal from this decision, appellants point out that the conveyance includes all the lessor's interest in geothermal lease CA 1010. They state they paid a fee of \$950 when they chose to acquire that interest. 2/

Despite conveyance by the patent of all the lessor's interest then held by the United States to appellants, BLM's decision now suggests that this provision was improper. We agree with BLM that the Geothermal Steam Act, like other mineral leasing legislation, provides no such authority. See Authority to Issue Patent without Reservation of Oil and Gas Where Subsequent to a Consent by the Entryman to Such a Reservation the United States has Issued an Oil and Gas Lease and Thereafter has Classified the Land as not Prospectively Valuable for Oil and Gas, 61 I.D. 459, 461-64 (1954). In that opinion, the Acting Solicitor concluded that the United States was without authority to convey its interest as a lessor to a reclamation homesteader. 3/ However, the Acting Solicitor expressly recognized "that Congress may provide for a transfer of the lessor's interest

2/ Technically, the \$950 amount was not for the Government's interest as lessor, but resulted from a determination by the Minerals Management Service that the land was prospectively valuable for geothermal resources and that its value was \$25 per acre, or \$950. Appellants were informed of this determination by decision dated Oct. 31, 1982, but were not informed about the existence of the lease. BLM did not inform appellants about that fact until issuance of a decision dated Apr. 14, 1983, which stated that the mineral estate would be conveyed subject to the terms of the lease. We note, however, that lease CA 1010 was in effect when BLM informed appellants on Oct. 31, 1982, that the value of the mineral estate was \$950. Were we to accept BLM's view that the conveyance of the lessor's interest was ineffective, a reappraisal of the value of the mineral estate would be required together with an appropriate refund to appellants.

3/ In the case considered by the Acting Solicitor, an oil and gas reservation could have been imposed on the reclamation homestead patent if the land were valuable for oil or gas. Nevertheless, the land was classified

as it did by clear implication in the act of September 6, 1950 (64 Stat. 769, 7 U.S.C. 1033), when it authorized the sale of certain reserved mineral interests 'Notwithstanding any other provision of law.'" Id. at 464. The statute in question provided for the conveyance of certain mineral interests by quitclaim deed, and although the statute made no reference to the transfer of interests subject to existing leases, the Department nevertheless recognized that the Government's interest as lessor could be transferred. Id.

The same Acting Solicitor authored a later opinion involving a situation more directly analogous to the instant appeal. A large Federal oil and gas leasehold covered reserved mineral deposits, some of which were subsequently conveyed from the United States to the surface owners pursuant to 7 U.S.C. § 1033 (1988), while other deposits under the lease remained in Federal ownership. The Acting Solicitor observed that "the Government's interest in the lease so far as it affects the minerals conveyed is expressly quit claimed." Status of a Lease After Sale of Part of the Leased Premises to Others than the Original Lessee, M-36269 (Mar. 24, 1955), at 4. (In the instant appeal, that interest was not quitclaimed but expressly patented.) The Acting Solicitor then commented on the remaining interest of the United States in the lease:

The sole remaining interest of the United States in the lease goes to that portion of the area in which the United States owns all or part of the minerals. It has no interest in those areas where it has conveyed both the land and minerals. It has quit claimed both and its deed is equivalent to a patent. Upon execution of the deed the Department has lost jurisdiction over the matter conveyed by the deed, Peyton v. Desmond, (1904) 129 Fed. 1; 1 Op. Atty. Gen. 159 (1807); and Heirs of C. C. Creciat, 40 L.D. 623. Since all of the rights of the United States were conveyed, including its rights as lessor, it is elementary that it has no voice in the disposal of the minerals and may not share in the royalties. To hold otherwise would be unfair to the purchasers since the deeds themselves show that a substantial consideration was paid in each case for the minerals.

Id.

[1] Under section 209(b) of FLPMA, 43 U.S.C. § 1719(b) (1988), an application for conveyance of mineral interest to the owner of the surface estate may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) the reservation of the mineral rights

fn. 3 (continued)

as having no prospective value for oil and gas, notwithstanding the issuance of an oil and gas lease. It was concluded that a patent might issue only if oil and gas deposits were excepted from the grant for so long as the outstanding oil and gas lease should continue in force, and that title to the deposits would vest in the patentee at lease termination.

in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Like 7 U.S.C. § 1033 (1988), section 209 of FLPMA authorizes the conveyance of the mineral estate without specific reference to the interest of the United States

as lessor. ^{4/} We find nothing in this provision to prohibit BLM from making the conveyance to appellants so as to void the patent. Accordingly, we conclude that because the patent to appellants expressly conveys the interest of the mineral lessor held by the United States, BLM was not entitled to collect rental accruing to the conveyed portion of the lease after patent issued to the mineral estate in appellants' land.

[2] Because, as appellants correctly contend, the United States transferred to them all of its interest as lessor, it necessarily follows that BLM had no jurisdiction over the land and had no authority to administer that portion of the lease on appellants' behalf. After the effective date of the conveyance, the collection of rental was a private matter between appellants and the lessee, and by accepting the conveyance of the lessor's interest, appellants undertook the obligation of notifying the lessee of when and where payment for their portion of the lease was to be sent. Because BLM had no authority to accept rental payment for land over which

it had no jurisdiction, BLM was obliged to refund the excess amount to the lessee rather than send it to appellants. See Romola A. Jarett, 63 IBLA 228, 89 I.D. 207 (1982). It would have been improper for BLM to assume that the lessee would have wanted to continue that portion of the lease which had been conveyed. Id. ^{5/}

^{4/} One other statute provides for transfer of land subject to a mineral lease or permit if none of the land subject to that lease is in a producing or producible status. 43 U.S.C. § 852(a)(3) (1988).

^{5/} Another issue affecting the rental arises from the fact that appellants now stand in the shoes of the United States as lessor. Their rights, liabilities, and obligations are no greater or no less than those of the United States, and they are defined by the same legal principles which govern the rights under the lease. A statutory condition for payment of rental provides: "If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law." 30 U.S.C. § 1004(c) (1988). This statutory provision is repeated in section 4 (payments) of the lease. Thus, because the rental was not timely paid to appellants on Aug. 1, 1983, (instead, all rental was paid to BLM) that portion of the lease on appellants' land may arguably have terminated then, while the Federal portion of the lease continued. On the other hand, one could argue that the failure by both BLM and appellants to notify the lessee of the change in ownership precludes either of them from asserting that the lease terminated with respect to the portion underlying appellants' parcel. Nevertheless, the statutory provision quoted above also provides for reinstatement of such a lease, but permits a lessee to decline to seek reinstatement of the lease without liability for rental if he no longer wishes the lease to continue. In a sense, the statutory provision

Therefore, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, 43 CFR 4.1, the decision denying transfer of the rental is affirmed as modified, and the case is remanded for further action consistent with this opinion.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

fn. 5 (continued)

gives the lessee an option to let the lease terminate simply by not paying the rental. Refunding the excess rental to the lessee would give effect to this provision.